

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RYAN DuBOISE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-cv-08-SPB
)	
MICHAEL OVERMYER, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This prisoner civil rights action was received by the Clerk of Court on January 8, 2018 and was referred to the undersigned, then a United States Magistrate Judge, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72(C) and (D) the Local Civil Rules of Court. On February 2, 2018, the complaint of Plaintiffs Ryan DuBoise (“DuBoise”) and Michael Overmyer (“Overmyer”) was filed. ECF No. 10.

Defendants filed the instant motions to dismiss on May 2, 2018. ECF No. 26. Plaintiffs filed a response and brief in opposition to the motion on July 12, 2018. ECF Nos. 43, 44.

On September 14, 2018, the undersigned was sworn in as a United States District Judge. This action was reassigned to the undersigned, as presiding judge, on September 18, 2018, and was subsequently assigned to United States Magistrate Judge Richard A. Lanzillo for all pretrial proceedings on September 27, 2018.

On October 3, 2018, Judge Lanzillo issued a Magistrate Judge’s Report and Recommendation (“R&R”) recommending that the Defendants’ motion to dismiss be granted and that the complaint be dismissed without prejudice to be amended. ECF No. 50. Objections to the R&R were originally due on October 22, 2018. By order entered on October 30, 2018,

however, DuBoise's deadline for filing objections was extended to November 30, 2018. To date, no objections have been filed by either Plaintiff.¹

After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 20th day of December, 2018;

IT IS ORDERED that the Defendants' motions to dismiss (ECF No. [26]) is GRANTED, and the Complaint is DISMISSED without prejudice to Plaintiffs' right to file an amended complaint on or before January 11, 2019. In the event Plaintiffs fail to file an amended pleading within the aforesaid deadline, this dismissal shall be converted to a dismissal with prejudice, and the case shall be closed.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on October 3, 2018 (ECF No. [50]), is adopted as the opinion of the court.

/s/ Susan Paradise Baxter

SUSAN PARADISE BAXTER
United States District Judge

¹ The Court notes that a copy of the Report and Recommendation was mailed to Keys at his address of record on October 4, 2018; however, the mailing was returned to the Court on October 30, 2018 with the notation "Not Deliverable as Addressed, Unable to Forward."